

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS,
DEPARTMENT OF HEALTH,
BOARD OF MEDICAL LICENSURE
AND DISCIPLINE

No. C94-127

In the matter of:
John R. Bernardo, Jr., M.D.

CONSENT ORDER

Pursuant to Section 5-37-5.1 of the General Laws of the State of Rhode Island, 1956, as amended, a complaint was filed with the Board of Medical Licensure and Discipline (hereinafter referred to as "Board") charging John R. Bernardo, Jr., M.D., Respondent, with violations of Section 5-37-5.1 of the General Laws of the State of Rhode Island, 1956, as amended. Investigations were conducted by Investigating Committee II, so called, of the Board.

Investigating Committee II reported its evaluations and recommendations to the Board. The report was reviewed by the Board and it recommended further action.

The following constitutes the Findings of Fact with respect to the professional performance of the Respondent.

Findings of Fact

1. A 34 year-old male presented at the Respondent's office on December 12, 1991 complaining of pain in the left wrist when his wrist was flexed or abducted. The Respondent aspirated the contents of a ganglion cyst on that date and documented his plan to excise the cyst, if necessary, at a later date.
2. On December 26, 1991, the patient went to a hospital ambulatory surgery unit to have the Respondent excise the ganglion which had recurred.
3. On the morning of the surgery, the Respondent saw the patient in the preparation room. The patient had an

intravenous infusion in his right hand. The Respondent claimed that the patient complained of additional symptoms which lead to a clinical diagnosis of carpal-tunnel syndrome and the Respondent offered to relieve it during the same anesthesia given for the cyst excision. The Respondent added "release of carpal tunnel syndrome" to the consent form and signed his initials and the patient's initials to the form containing the additional surgery. The patient denies discussing or agreeing to the additional surgery.

4. The Respondent proceeded to excise the ganglion and then "released the carpal tunnel syndrome".

5. The patient stated he had not complained of numbness in his fingers, did not sign his initials to the altered consent form and was unaware of additional surgery until his subsequent post-operative visit on 12/31/91.

6. Respondent's failure to evaluate properly the alleged complaints of numbness in the patient's fingers before diagnosing carpal tunnel syndrome and document informed consent for surgery before proceeding with surgical treatment is unprofessional conduct as defined in Rhode Island General Laws 5-37-5.1(19).

The parties agree as follows:

(1) The Respondent is a physician licensed and doing business under and by virtue of the Laws of the State of Rhode Island, allopathic license No. 3043. Respondent's mailing address is 110 Lockwood Street, Providence, Rhode Island 02903.

(2) Respondent admits to the jurisdiction of the Board and hereby agrees to remain under the jurisdiction of the Board.

(3) Respondent has read this consent order and understands that it is a proposal of the Investigating Committee II of the Board and is subject to the final approval of the Board. This consent order is not binding

on respondent until final ratification of the Board.

- (4) Respondent hereby acknowledges and waives:
- a. The right to appear personally or by counsel or both before the Board;
 - b. The right to produce witnesses and evidence in his behalf at a hearing;
 - c. The right to cross examine witnesses;
 - d. The right to have subpoenas issued by the Board;
 - e. The right to further procedural steps except for specifically contained herein;
 - f. Any and all rights of appeal of this Consent Order;
 - g. Any objection to the fact that this Consent Order will be presented to the Board for consideration and review;
 - h. Any objection to the fact that it will be necessary for the Board to become acquainted with all evidence pertaining to this matter in order to review adequately this Consent Order;
 - i. Any objection to the fact that potential bias against the Respondent may occur as a result of the presentation of this Consent Order;

- (5) If the Consent Order is not accepted by the Respondent, the Investigative Committee will recommend to the Board that an Administrative Hearing be scheduled with respect to any and all acts of alleged unprofessional conduct. If the Board approves, a Hearing Committee will be convened for the purpose of conducting the Administrative Hearing. The composition of the Hearing Committee is described in statute. If the hearing committee votes in favor of finding the Respondent guilty of unprofessional conduct as specified in the charges,

the Board shall prepare written finding of fact and law in support of said conclusion. If the accused is found not guilty, the Board shall, forthwith, issue an order dismissing the charges.

(6) By acceptance of this Consent Order Respondent agrees not to contest this matter further.

(7) This Consent Order shall become part of the public record of this proceeding once it is accepted by all parties and by the Board. It shall be published as the Board, in its exercise of its discretion, shall determine.

(8) Failure to comply with this Consent Order, when signed and accepted, shall subject the Respondent to further disciplinary action.

(9) Respondent voluntarily accepts the Board's finding of unprofessional conduct with a sanction of a Reprimand. The Respondent will be required to pay an Administrative Fee of Five Hundred (\$500) Dollars within sixty days of ratification of this Consent Order.

Signed this 2nd day of March 1995.



John R. Bernardo, Jr., M.D.

Ratified by the Board of Medical Licensure and Discipline at
a meeting held on March 8, 1995.

Patricia Nolan, M.D., M.P.H.
Patricia Nolan, M.D., M.P.H.
Director of Health
Chairperson
Board of Medical Licensure and
Discipline